

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

2. It is noted that the information disclosure statement (IDS) submitted on 3/6/05 lists a US Application Publication (PG Pub) document 2002/0069872 under the Non-Patent Literature section. While the reference is being considered, Applicant is suggested to list the PG Pub document under proper section.

### ***Claim Objections***

3. Claims 58 and 60 are objected to because of the following informalities: in line 5 consider inserting --an-- before “extra-oral flap”--. In claim 60 line 2 consider replacing “breath” to --breathe--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. **Claims 58-66 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 58 line 3 the terms "extending from though" is confusing. It appears Applicant is trying to define an extending point using those terms, however, it is not clear whether Applicant means from "and" though. In lines 7 and 8 the terms "the upper edge" and "nose or nasal passages" lack antecedent bases.

In claim 59, lines 2 and 3 the recitations of "in use covers said user's nose" are confusing because it is not clear whether the recitation is referring to the nose flap or the extra-oral flap. It is understood from the disclosure that the nose flap covers the user's nose. Therefore, for the examination purposes said recitations are read with respect to the nose flap.

In claim 60 line 2 the terms "said nose flap" lack antecedent bases (when considered depending from claim 58).

In claim 65 line 2 the terms "extra-oral sealing" lacks antecedent bases.

#### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. **Claims 58, 59, and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by Oberto US 2,521,084.**

**As to claim 58,** Oberto discloses a mouthpiece comprising a vestibular shield (19) capable of being positioned in the mouth vestibule of a user (see fig.1); gases passageway means (21) extending from through said vestibular shield allowing for the passage of said gases through said mouthpiece; an extra-oral flap (see labeled fig.1, attachment below) associated with said gases passageway to assist with compression upon a user's face, and nose attachment (see labeled fig.1, attachment below) connected to at least part of the upper edge of said extra-oral flap which in use covers or abuts said user's nose or nasal passages (see fig.1).

**As to claim 59,** Oberto discloses said nose attachment is a nose flap connected to at least part of the upper edge of said extra-oral flap that in use covers said user's nose (see fig.1).

**As to claim 60,** Oberto in figure 1 shows there is a passageway formed between said extra-oral flap (also see labeled figure1 attachment below). Figure 1 of Oberto shows that the position of the passageway leaves a space between the user's nasal cavity and the nose flap and this space allows gases coming from oxygen hose (14) and port (24) to enter nasal cavities. Thus, Oberto's nose flap is structured to allow a user to breathe gases through their nasal cavities.

8. **Claims 58-60, 63, 64 and 66 are rejected under 35 U.S.C. 102(b) as being anticipated by Holzel US 4,440,165.**

**As to claim 58,** Holzel discloses a mouthpiece comprising a vestibular shield (96) capable of being positioned in the mouth vestibule of a user (see fig.5a); gases passageway means (16) extending from and through said vestibular shield allowing for the passage of said gases though said mouthpiece; an extra-oral flap (20) associated with said gases passageway to assist with compression upon a user's face, and a nose attachment (104 and 18) connected to at least part of the upper edge of said extra-oral flap which in use covers or abuts said user's nose or nasal passageways.

**As to claim 59,** Holzel in figure 5a shows that the nose attachment is a nose flap connected to at least part of the upper edge of said extra-oral flap that in use covers said user's nose.

**As to claim 60,** Holzel in figure 5a shows open space/passageway formed between the extra-oral flap and nose flap, which would allow user to breathe gases through their mouth cavities.

**As to claim 63,** Holzel discloses protuberances (18) on the nose flap causes a seal to be formed about said user's nose preventing the user from nasal breathing.

**As to claim 64,** Holzel's protuberance (18) is a plug, thus acts as a blocking member to block said user's nose (see col.5 lines 45 and 46).

**As to claim 66,** Holzel in figure 5a shows said nose attachment is at least one protrusion capable of resting against the outside of said user's nose to press the outer edges of said user nose (using protuberances (18)) to partially or fully block the nares of said user's nose.

9. **Claims 58 and 65 are rejected under 35 U.S.C. 102(b) as being anticipated by Feinberg US 1,445,010.**

**As to claim 58,** Feinberg discloses a mouthpiece comprising a vestibular shield (15) capable of being positioned in the mouth vestibule of a user, gases passageway means (11) extending from though said vestibular shield allowing for the passage of said gases though said mouthpiece; an extra-oral flap (10) associated with said gases passageway to assist with compression upon a user's face, a nose attachment (25) connected to at least part of the upper edge of said extra oral flap (see fig.3) which in use covers or abuts said user's nasal's passages.

**As to claim 65,** Feinberg in figure 3 shows that the nose attachment is a pair of nasal cannula extending above (figure 3 shows that the cannula are extending above a flat surface on the extra oral flap) said extra oral sealing means and attached to said gasses passageway to supply gases to said user's nasal cavities (see page 2 lines 15-24).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. **Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oberto US 2,521,084 in view of Kwok US 6,112,746.**

**As to claim 62,** Oberto lacks nose flap has a lip about its perimeter, however, Kwok teaches a lip (45) on a periphery of a nose mask (see fig.4) that effectively seals the difficult region of the facial contour (see col.4 lines 18-24). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Oberto in order to provide

a lip on the perimeter of the nose flap for the purposes of sealing difficult region of the facial contour as taught by Kwok.

**13. Claim 61 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oberto US 2,521,084 in view of Aulicono US 3,508,543.**

**As to claim 61,** Oberto lacks at least one nasal cannula. However, Aulicono in a mouthpiece teaches a pair of nasal cannula (7) positioned on a breathing tube for allowing gas passage to the nose from the tube (see 2 and col2 lines 22-26). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Oberto in order to provide nasal cannula on tube 21 for the purposes of allowing gas from tube 21 to enter nasal passage as taught by Aulicono. The passage as discussed in claim 60 would allow nasal cannula to enter nose flap area to be positioned inside the user's nostrils, therefore, the nasal cannula will inherently be covered by said nose flap.

**As to claim 67,** Oberto discloses the claimed invention as applied for claim 1. Aulicono teaches a pair of nasal cannula as applied for claim 61.

### *Conclusion*

**14.** The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art made of record cited in the PTO form 892 not relied upon pertain to mouthpieces.

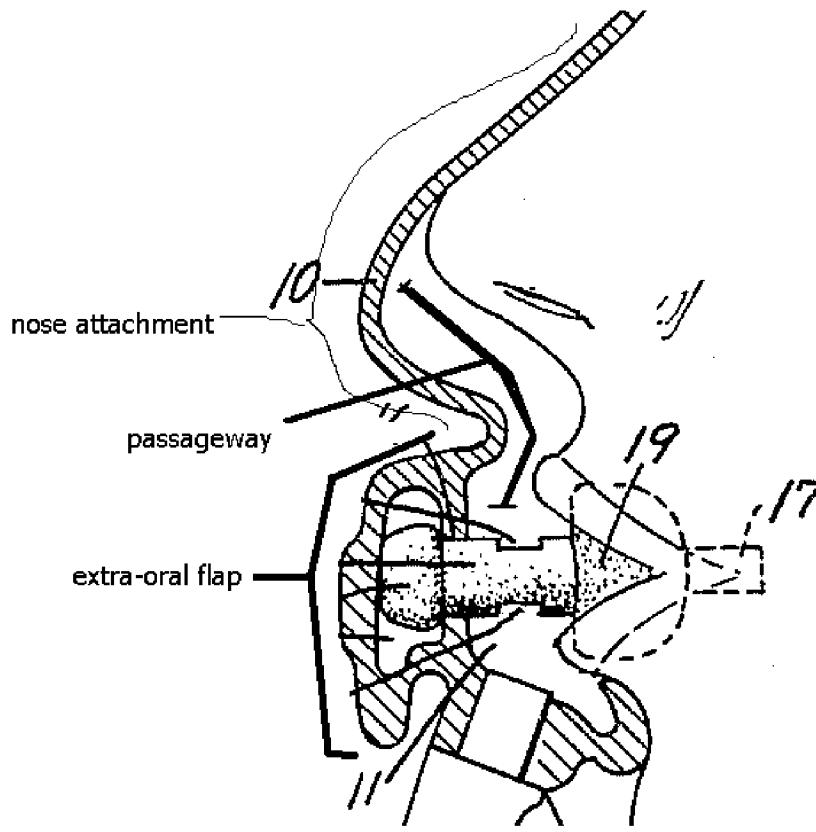
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHUMAYA B. ALI whose telephone number is (571)272-6088. The examiner can normally be reached on M-W-F 9 am - 5 pm.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Prior Art  
US 2,521,084  
Oberto

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